

REMARKS/ARGUMENTS

Favorable reconsideration of the present application is respectfully requested.

It is respectfully requested that the examiner contact the undersigned attorney to arrange an interview before the issuance of any first Office Action following the filing of the RCE.

Claim 1 has been amended to further recite that the valve is controlled to open or close at an intended timing.

Claim 12 has been amended to delete the erroneous limitation introduced in the last response, as noted on page 2 of the Office Action. This deletion is believed to overcome the rejection under 35 U.S.C. § 112.

New Claim 51 is based on Claim 8 but further recites that the hydrogen-off gas discharged from the fuel cell may circulate back to the fuel cell. New Claim 52 is based on Claim 1 but further recites that the mixing portion is connected to receive *only* the discharged hydrogen-off gas and the discharged oxygen-off gas from the first and second flow passages respectively so that *only* oxygen-off gas may be mixed with the hydrogen-off gas and *only* hydrogen-off gas and oxygen-off gas can flow through the third flow passage.

The rejection of Claim 1 under 35 U.S.C. § 102 as being anticipated by GB 2242563 is believed to be moot in view of the further recitation that the valve is controlled to open and close at an intended timing, since the valves 73 of GB '563 are merely non-return valves. Additionally, with respect to new Claim 52, it is noted that additional air is supplied to the oxygen-off gas before the oxygen-off gas is mixed with the hydrogen-off gas (Fig. 3). Thus this claim also defines over GB '563.

Claims 8 and 11-15 have again been rejected under 35 U.S.C. § 103 as being obvious over WO '993 in view of Boneberg et al. This rejection is again traversed for the reasons set forth at pages 11-13 of the response filed on October 18, 2007, which reasons are herein

incorporated by reference. Moreover, it is respectfully noted that the “Response to Arguments” portion of the outstanding Office Action did not address the argument of the prior response that the mixing portion 4 of Boneberg et al, which must supply a burner 3 for heating a reformer, would receive substantially no hydrogen gas for the burner if connected to the anode circuit of WO ‘993, and so such a combination would have no utility and would not have been obvious to one skilled in the art.

With regard to Claim 13, the “Response to Arguments” portion of the outstanding Office Action stated that the PLC of WO ‘993 is equivalent to the claimed means for opening and closing the valve at intervals of a relatively short period. Here again, however, the Office Action has not addressed the argument of the last response that where the disclosed structure for performing the claimed function in a means-plus-function claim is a computer or microprocessor programmed to carry out an algorithm, the disclosed structure is not the general purpose computer, but rather the special purpose computer *programmed to perform the disclosed function*. *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 51 USPQ2d 1385, 1393-1394 (Fed. Cir. 1999). Therefore, any equivalent controller in the reference must be programmed to perform the claimed function. The Office Action has not alleged that the PLC of WO ‘993 is programmed for opening and closing the valve at intervals of a relatively short period when delivering the discharged oxygen-off gas to the mixing portion (or “at an intended timing” as recited in amended Claim 1), and so there is no evidence to support the presence of the claimed means or its equivalent in the prior art.

Concerning the rejections of the dependent claims 37-39 under 35 U.S.C. § 103 as being obvious over WO ‘993 in view of Boneberg et al and further in view of Shabaker, since Shabaker was cited to teach features of the dependent claims and fails to suggest combining WO ‘993 and Boneberg et al, it is respectfully submitted that these claims also define over the prior art for the reasons discussed above.

Applicants therefore believe that the present application is in a condition for allowance and respectfully solicit an early Notice of Allowability.

Respectfully submitted,

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